

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 949-A
Case No. 00-36CP/16638
(Campus Plan and Further Processing – American University)
March 11, 2002

This Order on Reconsideration arises out of two motions for reconsideration of Order No. 949, which conditionally approved an application by American University (“University” or “Applicant”) for special exception approval pursuant to 11 DCMR § 3104.1, and in accordance with § 210 of the Zoning Regulations, of an updated campus plan for a period of 10 years and further processing approval, under the approved campus plan, of certain construction on the University’s campus located in Ward 3 in Northwest Washington, D.C.

HEARING DATES: March 11, 2002

DECISION DATES: March 11, 2002

SUMMARY ORDER

The Applicant submitted applications for approval of the American University Campus Plan for Years 2000-2010 (“Campus Plan”) and further processing applications to construct the Katzen Arts Center, an addition to the Mary Graydon Center, and the enclosure of the driveway underneath the Butler Pavilion and Sports Center Complex. By Order No. 949, the Commission approved the applications subject to conditions necessary to minimize the impacts on neighboring properties from existing conditions and any potential impacts from planned future development.

In addition to the Applicant, Advisory Neighborhood Commissions (“ANCs”) 3D and 3E were automatically parties to this case. The Commission granted party status to Neighbors for a Livable Community, Spring Valley-Wesley Heights Citizens Association, Fort Gaines Citizens Association, American University Park Citizens Association, and Spring Valley Court Association (collectively, the “Neighborhood Associations”), Tenley Campus Neighbors Association (“TCNA”), Robert Herzstein, and Priscilla Holmes.

TCNA Motion

On January 18, 2002, TCNA submitted a motion for reconsideration of Order No. 949. The motion asserts that (1) the Commission erroneously concluded that the Board of Zoning

Adjustment did not incorporate the conditions of the 1986 Agreement between the University and ANC 3E into the Board's order conditionally approving the University's proposed use of the Tenley Campus; (2) the Commission erroneously assumed that the conditions of the 1986 Agreement and the Board's order did not survive the approval of the 1989 Campus Plan; (3) Order No. 949 erroneously states that it gave "great weight" to the views of ANC 3E; (4) the Commission failed to consider why the Office of Planning endorsed restrictions on the Tenley Campus in 1986 as being necessary to avoid objectionable conditions but 15 years later endorsed a "massive increase" in the intensity of use of the Tenley Campus; and (5) procedures provided for neighbors to air their views and influence the process on Project M were inadequate and less than those provided for any other aspect of the Campus Plan.

The University opposed TCNA's motion, arguing that the issues were thoroughly addressed by the Commission and there was no basis to overturn its decision. The University also challenged TCNA's assertion that the Commission failed to give "great weight" to the issues and concerns of ANC 3E, as well as its claim of error with respect to participation by neighbors of the Tenley Campus. The University also urged denial of TCNA's motion on the issue of the role of the Office of Planning.

The Commission is not persuaded by the arguments set forth by TCNA. Several of the issues raised in TCNA's motion, specifically matters pertaining to the 1986 Agreement, inclusion of the Tenley Campus in the 1989 Campus Plan, and notice to neighbors of the Tenley Campus of public hearings on the University's application, were previously considered and decided by the Commission. TCNA provides no persuasive reason for the Commission to revisit its decisions on these issues.

Nor is the Commission swayed by TCNA's claim that the Commission failed to give the statutorily required "great weight" to the issues and concerns of ANC 3E. As the University notes in its opposition to TCNA's motion, a representative of ANC 3E thoroughly participated in this case on behalf of the ANC, made a presentation to the Commission regarding the ANC's concerns about the proposed Campus Plan, and had an opportunity to cross-examine other parties' witnesses. The ANC also submitted written resolutions delineating its issues and concerns. The Commission fully considered the issues and concerns of ANC 3E along with all the other testimony and evidence included in the record in this case. The Commission accorded great weight to ANC 3E's issues and concerns by addressing each with specificity in Order No. 949, and by describing with particularity and precision the reasons why the ANC did or did not offer persuasive advice under the circumstances, in accord with D.C. Code 1-309.10 (d)(3) (2001). *See, e.g. Neighbors Against Foxhall Gridlock v. D.C. Bd. of Zoning Adjustment*, 792 A.2d 246 (D.C. 2002); *Foggy Bottom Ass'n. v. D.C. Bd. of Zoning Adjustment*, 791 A.2d 64, 70 (D.C. 2002).

The Commission finds no grounds for reconsideration of Order No. 949 on the basis of recommendations by the Office of Planning in this case relative to recommendations it purportedly made in the 1986 proceeding before the Board of Zoning Adjustment. The Commission's decision on the University's application was based on the reliable, probative, and substantial evidence in the record in this case. *See* D.C. Code § 2-509 (2001). The Commission concurs with the University that TCNA's assertions concerning recommendations by the Office

of Planning in 1986 are not material to a determination by the Commission in 2001 of whether to approve the proposed Campus Plan as consistent with the criteria set forth in § 210 of the Zoning Regulations.

Neighborhood Associations Motion

The Neighborhood Associations also filed a motion for reconsideration on January 18, 2002. The Neighborhood Associations raised issues concerning the student enrollment cap, University-related parking on neighborhood streets, membership of the Liaison Committee, orientation of the new bleachers, landscape buffering of the new campus roadway, chain barriers to close the western road on campus to motor vehicles, orientation of loudspeakers used on the athletic fields, vehicle access to parking garages from Massachusetts and Nebraska Avenues, and continuation of commitments made previously by the University.

The University also opposed the request for reconsideration submitted by the Neighborhood Associations. According to the University, all of the issues raised by the Neighborhood Associations were fully reviewed by the Commission and appropriately addressed in Order No. 949, and the arguments made in the motion did not provide an adequate basis for reversing or modifying the conditions of approval of the Campus Plan and further processing applications.

The Commission is persuaded that certain aspects of the motion for reconsideration by the Neighborhood Associations warrant consideration in order to clarify Order No. 949. With respect to the bleachers approved as part of Project C, Order No. 949 inadvertently stated that Project C was appropriate for inclusion in the new Campus Plan with, among other things, the bleachers "arranged in three horizontal rows facing the campus rather than the nearby houses." *See* 49 D.C. Reg. at 329. Condition No. 10(c) of Order No. 949 correctly stated the Commission's intent that Project C would include no more than 250 new permanent bleacher seats, constructed on the ground, and arranged horizontally in three rows facing toward the residences. The Commission clarifies its intent to include the University's proposed Project C in the new Campus Plan with a maximum of 250 new permanent bleacher seats constructed on the ground and arranged in three horizontal rows facing the athletic fields, rather than the campus, and therefore also facing the abutting residences, albeit at a distance.

The Neighborhood Associations' motion cited certain commitments made by the University during the course of the public hearing that were not reflected in the conditions of approval enumerated in Order No. 949. The commitments concerned the University's assurances that (1) a chain would be installed across the western campus road to prohibit certain vehicular traffic; (2) gate controls would not be installed at the entrances to parking garages with vehicular access off Massachusetts or Nebraska Avenue; and (3) the perimeter fence installed pursuant to the 1989 Campus Plan would be continued and maintained. The Commission concurs with the Neighborhood Associations that Order No. 949 should be modified to clarify the intent of the parties and the Commission to incorporate the commitments made by the University during the course of the public hearing in this proceeding. Accordingly, the Commission adopts new Condition No. 19 as a condition of approval of the University's application for approval of a new Campus Plan:

19. The University (a) shall install a chain barrier closing the western campus road to vehicular traffic, with the exception of vehicles that need access for emergency or maintenance purposes, until the western road is removed, as shown in the Campus Plan; (b) shall not install gate controls at the entrances of parking garages with vehicular access from Massachusetts or Nebraska Avenue; (c) shall maintain the perimeter fence and gates adjoining the residential neighborhoods; and (d) shall continue to provide access cards for neighboring residents in accordance with the procedure implemented pursuant to the 1989 Campus Plan.

The Neighborhood Associations also requested reconsideration of certain other aspects of Order No. 949, including the student population cap, University-related parking on neighborhood streets, the Liaison Committee, the width of the new campus roadway, and loudspeakers used on the athletic fields. The Commission concurs with the University that these issues were fully reviewed during the course of this proceeding and appropriately addressed in Order No. 949. The Neighborhood Associations provide no persuasive reason for the Commission to revisit its decisions on these issues.

Accordingly, it is **ORDERED** that the motion of the Tenley Campus Neighbors Association for reconsideration of Order No. 949 is **DENIED**.

VOTE: **4-0-1** (Carol J. Mitten, Anthony J. Hood, Herbert M. Franklin, and John G. Parsons to approve; James Hannaham not voting, having not heard the case).

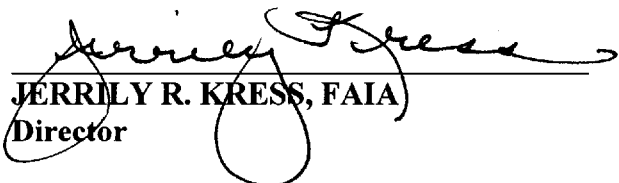
It is **ORDERED** that the motion of the Neighborhood Associations for reconsideration of Order No. 949 is **GRANTED** in part and **DENIED** in part consistent with this decision.

VOTE: **4-0-1** (Carol J. Mitten, Anthony J. Hood, Herbert M. Franklin, and John G. Parsons to approve; James Hannaham not voting, having not heard the case).

BY ORDER OF THE ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

Each concurring member has approved the issuance of this Summary Order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: APR 30 2002

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURES AND RENOVATIONS WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE § 1-2531 (1999 Repl.). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.